#### UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

TRUSTEES OF CARPENTERS PENSION TRUST FUND - DETROIT AND VICINITY,

Plaintiff,

VS.

Case No. Hon.

Previously Filed Case: Case No. 4:13-cv-12701 Hon.: Terrence G. Berg

CENTURY TRUSS COMPANY, d/b/a BERGERON CORPORATION, a Michigan corporation, CENTURY TRUSS COMPANY OF MICHIGAN, L.L.C., a Michigan limited liability company, and B. GERALD BARTUSH as Personal Representative of the Estate of RANDY M. BERGERON, Deceased, jointly and severally,

1	Defendants.

#### **COMPLAINT**

Plaintiff complains against Defendants as follows:

#### **GENERAL ALLEGATIONS**

1. The Carpenters Pension Trust Fund - Detroit and Vicinity ("Plaintiff" or "the Fund") is a jointly-trusteed fund established pursuant to Section 302 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. Section 186 and Section 302 and 515 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. Sections 1132 and 1145, and brings this action on behalf of its individual participants.

- 2. Upon information and belief, Defendant Century Truss Company ("Century Truss") was and is, at all relevant times, a Michigan corporation d/b/a Bergeron Corporation with a registered office address of 32423 Grand River Ave., Suite 200, Farmington, MI 48336.
- 3. Upon information and belief, Defendant Century Truss Company of Michigan L.L.C. ("Century Truss of Michigan") was and is, at all relevant times, a Michigan limited liability company with a registered office address of 17199 N. Laurel Park Dr., Suite 402, Livonia, MI 48152.
- 4. Upon on information and belief, Defendant Century Truss and Defendant Century Truss Company of Michigan were and are, at all relevant times, alter-ego/successor companies (collectively both companies referred to as "Defendants" or "Employers").
- 5. Upon on information and belief, at all relevant times, Defendant Randy M. Bergeron ("Decedent") was the owner and resident agent of Century Truss and Century Truss of Michigan.
- 6. Decedent died on September 2, 2013. B. Gerald Bartush was appointed as the Personal Representative of Decedent's estate. [See Case No. 2013-352666-DE]
- 7. Prior to Decedent's death, a complaint was filed by the Fund against Defendants on June 16, 2013, containing the same allegations as stated herein. [See Case No. 13-12701, Hon. Terrence G. Berg]
- 8. Due to Decedent's passing, the Fund was unable to effectuate service within 120 days after filing the Complaint, and on December 18, 2013, this matter was dismissed without prejudice for failure to prosecute.
- 9. Under Michigan law, Decedent's estate is liable for Decedent's actions as described in this Complaint. See MCL 700.3805(i).

- 10. Pursuant to MCL 700.3801, B. Gerald Bartrush published the Notice to Creditors in the Oakland County Legal News on October 10, 2013, giving Plaintiffs four months after this date to present its claim to Decedent's Estate. (Exhibit C)
- 11. Plaintiffs filed a timely Statement and Proof of Claim on October 30, 2013. (Exhibit D)
- 12. Jurisdiction of this Court is founded on ERISA §4221(b)(1), 29 U.S.C. 1401 and ERISA §4301, 29 U.S.C. 1451(c).

#### COUNT I WITHDRAWAL LIABLITY

- 13. Plaintiff hereby incorporates by reference the allegations contained in Paragraphs 1 through 12 as fully set forth herein.
- 14. The Fund is a multiemployer defined benefit pension fund primarily covering employees in the carpentry building and construction industry.
- 15. Defendants Century Truss and Century Truss of Michigan were Employers obligated to make contributions to the Fund pursuant to collective bargaining agreements ("CBA").
- 16. Defendants' obligation to contribute ceased when they laid off all of their employees pursuant to 29 U.S.C. §1383.
- 17. Defendants are now required to pay their share of the Fund's unfunded vested benefits, "withdrawal liability," pursuant to provisions of the Multiemployer Pension Plan Amendments Act, 29 U.S.C. §§1381-1453.
- 18. The Funds' actuary initially calculated Defendants' withdrawal liability based on their contribution history and determined that Defendants were liable \$3,511,506.00 in withdrawal liability. (Exhibit A)

- 19. A demand letter was sent on August 25, 2011, requesting that Defendants pay either the full balance, or make installment payments. (**Exhibit B**) (Note, the actuary withdrawal liability calculation referenced in Exhibit B is attached as Exhibit A)
- 20. Defendants have not made any payments in response to the Fund's demand letter, and before his death Decedent affirmatively stated that Defendants would not make any such payments.
- 21. Defendants have not initiated arbitration pursuant to ERISA §4221(a)(1); 29 U.S.C. §1401(a)(1).
- 22. Because no arbitration proceedings have been initiated, ERISA §4221(b)(1); 29 U.S.C. §1401(b)(1) allows the Fund to bring an action for collection in this Honorable Court.

  ACCORDINGLY, Plaintiff requests that this Honorable Court grant the following relief:
  - (a) Enter a judgment in Plaintiff's favor against Defendants and Decedent's estate, for the amount of \$3,511,506.00 together with interest, actual attorney fees, court costs, audit and other collection costs and such other sums as may become due the Fund during the pendency of this action;
  - (b) Any such other further or different relief as may be just and equitable under the circumstances.

## COUNT II CONTROLLED GROUP LIABILITY

- 23. Plaintiff hereby incorporates by reference the allegations contained in Paragraphs 1 through 22 as though fully set forth herein.
- 24. Defendants Century Truss and Century Truss of Michigan were during the relevant time periods members of the same controlled group, as defined by 29 U.S.C. §1301(b)(1) and therefore must be treated as a single employer for the purposes of withdrawal liability.

- 25. Each member of the same controlled group is liable for the withdrawal liability of every other member.
- 26. Century Truss and Century Truss Company of Michigan were also, based on information and belief, alter ego and/or successor entities of one another during the relevant time periods, as alleged in Count IV, due to their common ownership (either actual or constructive); shared employees, materials, supplies, and customers/clients; and identical work performed.

ACCORDINGLY, Plaintiff requests that this Honorable Court grant the following relief:

- (a) Enter a judgment in Plaintiff's favor against Defendants and Decedent's estate for the amount of \$3,511,506.00 together with interest, actual attorney fees, court costs, audit and other collection costs and such other sums as may become due the Fund during the pendency of this action;
- (b) Any such other further or different relief as may be just and equitable under the circumstances.

## COUNT III TRANSACTION TO EVADE LIABILITY

- 27. Plaintiff hereby incorporates by reference each allegation contained in Paragraphs 1 through 26 as though fully set forth herein.
- 28. Upon information and belief, prior to death, Decedent transferred Century Truss and Century Truss of Michigan's assets to himself or other entities for the purpose of avoiding payment of withdrawal liability.
- 29. ERISA §4069; 29 U.S.C. §1369 and ERISA §4212; 29 U.S.C. §1392(c) imposes liability upon persons that enter into transactions with the principle purpose of avoiding withdrawal liability.

ACCORDINGLY, Plaintiff requests that this Honorable Court grant the following relief:

- (a) Enter a judgment in Plaintiff's favor against Defendants and Decedent's estate for the amount of \$3,511,506.00 together with interest, actual attorney fees, court costs, audit and other collection costs and such other sums as may become due the Fund during the pendency of this action;
- (b) Any such other further or different relief as may be just and equitable under the circumstances.

## COUNT IV ALTER-EGO/SUCCESSOR LIABILITY

- 30. Plaintiff hereby incorporates the allegations of Paragraph 1 through 29 of its complaint as though fully set forth herein.
- 31. Upon information and belief, during the relevant time periods Century Truss and Century Truss of Michigan were operated and owned by Decedent.
- 32. Upon information and belief, Century Truss and Century Truss of Michigan shared, including but not limited to, employees, materials, supplies, and customers/clients.
- 33. Upon information and belief, Decedent and/or his employees performed similar or identical work at Century Truss and Century Truss of Michigan.
- 34. Upon information and belief, Century Truss and Century Truss of Michigan are alter ego/successor entities of one another, and are therefore obligated to make contributions to the Fund pursuant to the CBA.
- 35. Century Truss and Century Truss of Michigan, as alter-ego/successor entities, are jointly liable for withdrawal liability due the Funds.
  - ACCORDINGLY, Plaintiff requests that this Honorable Court grant the following relief:
  - (a) Enter a judgment in the Plaintiff's favor against Defendants and Decedent's estate for the amount of \$3,511,506.00 together with interest, actual attorney fees, court costs, audit and other collection costs and such other sums as may become due the Fund during the pendency of this action;

(b) Any such other further or different relief as may be just and equitable under the circumstances.

### COUNT V BREACH OF FIDUCIARY DUTIES

- 36. Plaintiff hereby incorporates the allegations of Paragraph 1 through 35 of its complaint as though fully set forth herein.
- 37. Participants of the Fund were employed by Defendants to perform work on various construction projects in the state of Michigan.
- 38. Unpaid withdrawal liability is treated in the same manner as delinquent contributions under 29 U.S.C. §1451; ERISA §4301.
- 39. The Employer's unpaid contributions owed to the Funds became plan assets at the time they became due, within the meaning of ERISA §3(21)(A); 29 U.S.C. §1002(21)(A).
- 40. Decedent, as the owner and resident agent of Century Truss and Century Truss of Michigan, personally exercised authority and control over the companies' unpaid fringe benefit contributions, which constitute assets of the Funds.
- 41. Decedent was, at all relevant times, a plan fiduciary due to his exercise of authority and control over the Funds' assets, within the meaning of ERISA §3(21)(A); 29 U.S.C. §1002(21)(A).
- 42. By directing that the Century Truss and/or Century Truss of Michigan's assets, which were owed to the Fund, be paid to other creditors instead of being deposited with the Fund, Decedent failed to discharge his fiduciary duties with respect to the plan solely in the interest of the participants and beneficiaries as required by ERISA §404(a)(1); 29 U.S.C. §1104(a)(1).

- 43. As a result, Decedent breached his fiduciary duty to the Fund and is personally liable to the Fund for such breach.
- 44. The Fund has been damaged in the amount of \$3,511,506.00 because of Decedent's breach of fiduciary duty.

ACCORDINGLY, Plaintiff requests that this Honorable Court grant the following relief:

- (a) Enter a judgment in Plaintiff's favor against Decedent's estate for the amount of \$3,511,506.00 together with interest, actual attorney fees, court costs, audit and other collection costs and such other sums as may become due the Fund during the pendency of this action;
- (b) Any such other further or different relief as may be just and equitable under the circumstances.

#### NOVARA TESIJA, P.L.L.C.

By: /s/Zachary H. Learman

Zachary H. Learman (P71005)
Michael A. Novara (P64388)
Attorneys for Plaintiff
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Southfield, MI 48075-1314
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Dated: April 16, 2014

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Valuation Interest Rate: Withdrawal Date: Withdrew in Plan Year Beginning in: Allocated UVB after de minimis:



#### 1. Contributions/Units

Diam Vara

rian Year				
Beg.	Contributions	Contr. Rate	Units	3-yr. Avg.
5/1/1999	291,066,001		1001598888	References
5/1/2000	252 333:00	ninn	. , 156,427.00	
5/1/2001	258 281 001	1272 - 11 701 17 17 14 14 14 14 14 14 14	156 994 00	
5/1/2002		Contract the second second second	5127 229 00	100100-1100
5/1/2003	195 533 00	0000	1	146,883.33
5/1/2004		0.00	6113,288.00	132,503.67
5/1/2005	154 493 00		109675100	116,730.67
5/1/2006	359 594 00	German Commence of the Commenc	THE RESERVE OF THE PARTY OF THE PARTY.	the second section to the second section of the second section of the second section s
5/1/2007	Add the street of the street o	THE RESERVE OF THE PARTY OF THE PARTY.	34,096.00	77,518.86
	65 675 00		36 907.00	53,262,86
5/1/2008	2:00:00:00:00:00:00	0.000	22,199,00	31 067 33
5/1/2009		1881		

#### 2. Annual Payment Amount

" does est allest nelatravallan

1 Maximum 3-yr. average units during 10 years preceding withdrawal

166,094 units

2 Maximum contribution rate during 10 years ending with withdrawal

1.88

3 Annual payment amount

312,257

#### 3. Calculated Payment Schedule

= (1) x (2)

Assumes 8.00% interest (based on the valuation interest rate) with no interest charged until the first scheduled payment is due. The first payment will be due according to the schedule established by the Board of Trustees but cannot be later than 60 days following demand.

			 Annual Payment of:				Total Annual	
Year	*********	Balance	Principal	rincipal Interest		-	Payment	
1		3511,506	\$ 56,317	\$	255,940	\$	312,257	
2	\$	3,455,189	\$ 60,822	\$	251,435	\$	312,257	
3	\$	3,394,367	\$ 65,688	\$	246,569	\$	312,257	
4	\$	3,328,679	\$ 70,943	\$	241,314	Ş	312,257	
5	\$	3,257,736	\$ 76,619	\$	235,638	\$	312,257	
6	\$	3,181,117	\$ 82,748	\$	229,509	\$	312,257	
7	\$	3,098,369	\$ 89,368	\$	222,889	ş	312,257	
8	\$	3,009,001	\$ 96,517	\$	215,740	Ş	312,257	
9	\$	2,912,484	\$ 104,239	\$	208,018	\$	312,257	
10	\$	2,808,245	\$ 112,578	\$	199,679	\$	312,257	
11	\$	2,695,667	\$ 121,584	\$	190,673	\$	312,257	
12	\$	2,574,083	\$ 131,311	\$	180,946	\$	312,257	
13	\$	2,442,772	\$ 141,816	\$	170,441	\$	312,257	
14	\$	2,300,956	\$ 153,161	\$	159,096	\$	312,257	
15	\$	2,147,795	\$ 165,414	\$	146,843	\$	312,257	
16	\$	1,982,381	\$ 178,647	\$	133,610	\$	312,257	
17	\$	1,803,734	\$ 192,939	\$	119,318	\$		
18	\$	1,610,795	\$ 208,374	\$	103,883	\$	312,257	
19	\$	1,402,421	\$ 225,044	\$	87,213	\$	312,257	
20	\$	1,177,377	\$ 243,047	\$	69,210	\$.	312,257	
			\$ 2.577.176	s	3 667 964	\$	312,257	

#### 4. Actual Payment Schedule

80 quarterly payments of:

78,064.25

1 quarterly payment of:

3,511,506

Final Allocation: \$

Less De Minimis Adj: \$

# Carpenters Pension Trust Fund - Detroit and Vicinity Allocation of Unfunded Vested Benefits

CENTURY TRUSS COMPANY Employer:

Employer Number: Assumes Withdrawal in PYB;

34750 May 1, 2009

;	Allocated UVB  0 0 345,105 227,263 602,068 685,316 717,740 328,137 605,877
Aggregate	7.277 37,676,812 7.343 83,471,453 676 134,834,634 957 182,635,655 949 227,318,702 205 229,625,545 981 225,260,953 141 199,405,557 154 199,948,645 37 218,743,273 02 243,270,701
Rolling 5- Year Sum	254,277 545,343 797,676 1,055,957 1,270,949 1,212,205 1,111,981 1,014,141 815,454 666,137 511,902
Employer Contributions	254,277 291,066 252,333 258,281 214,992 195,533 190,842 154,493 59,594 65,675
Total Unamortized	0 0 0 61,724,641 43,049,973 121,964,628 134,750,290 175,989,270 107,752,379 287,930,201
Reallocated UVB	0 0 0 798,142 1,292,895 36,792,758 7,421,997 31,139,190
Change in UVB	0 0 88,178,058 56,655,031 151,243,696 123,901,275 188,533,970 83,923,272 272,310,529
April 30,	2000 2001 2002 2003 2004 2005 2006 2007 2008



John I. Tesija\* Michael A. Novara\*\* Edward J. Pasternak Brett P. Huebner Bıyan M. Beckerman Paul O. Catenacci Benjamin A. Schepis

\*Also admitted in Ohio

Of Counsel

\*\*Also admitted in Nevada and Washington, DC

August 25, 2011

VIA CERTIFIED MAIL ATTN: RANDY BERGERON CENTURY TRUSS COMPANY 7600 KENSINGTON COURT BRIGHTON, MI 48116

VIA CERTIFIED MAIL BERGERON CORPORATION 32423 Grand River Ave, Suite 200

Gary W. Novara, PLLC David A. Priehs, PC

FARMINGTON, MI 48336

Re:

Carpenters Pension Trust Fund-Detroit and Vicinity -Withdrawal Liability Assessment

Dear Mr. Bergeron:

We are legal counsel to the Carpenters Pension Trust Fund - Detroit & Vicinity ("the Fund"), and are contacting you regarding Century Truss's participation in the Fund. Based upon information available to the Fund, Century Truss terminated its participation therein, within the meaning of ERISA § 4203(a)(2) on or about October 29, 2010. Consequently, withdrawal liability has been assessed against Century Truss in accordance with the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended by the MultiemployerPension Plan Amendments Act of 1980 ("MPPAA") and subsequent amendments (collectively referred to as the "Act"), we hereby make demand for payment of withdrawal liability in accordance with the withdrawal liability assessmentcalculated by the Fund's actuary.

Assuming that withdrawal occurred during the Plan Year beginning May 1, 2009, and based on the presumptive method of calculation, which is more fully described in 29 U.S.C. § 1391, ERISA § 4211, the Fund's actuary has determined that Century Truss's withdrawal liability is \$3,511,506 if paid in a lump-sum. A copy of the actuary's withdrawal liability calculation is enclosed for your reference. This liability is owed by Century Truss or by any other person or entity that is considered an "Employer" under the Act, including affiliates, subsidiaries, or any other entities under the common control of Century Truss, and, in some cases, shareholders of Century Truss. You may be entitled to make installment payments in accordance with a schedule prepared in accordance with statutory rules, if a viable entity within Century Truss's controlled group intends to make payments.

If you have any questions regarding this matter, please advise.

Best regards,

NOVARA TESIJA, P.L.L.C. rett Hucker/me

BH/ml

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#### RANDY M. BERGERON

FILE NO. 2013-352666-DE NOTICE TO CREDITORS Decedent's Estate STATE OF MICHIGAN, Probate Court. County of Oakland - Estate of RANDY M. BERGERON aka RANDY MICHAEL BERGERON, Deceased. Date of birth: March 11, 1952, TO ALL CREDITORS: \* NOTICE TO CREDITORS: The decedent, Randy M. Bergeron aka Randy Michael Bergeron, who lived at 111 N. Main Street, Royal Oak, Michigan, died September 2, 2013. Creditors of the decedent are notified that all claims against the estate will be forever barred unless presented to B. Gerald Bartush, named personal representative or proposed personal representative. or to both the probate court at 1200 N. Telegraph, Pontiac, MI, and the named/proposed personal representative within 4 months after the date of publication of this notice. Date: Sepember 30, 2013 William C. Hanson, Atty. P26865 1750 S. Telegraph Road, Suite 301 Bloomfield Hills, MI 48302 248-253-1100 B. Gerald Bartush Personal Representative 1750 S. Telegraph Road, Suite 301 Bioomfield Hills, MI 48302 248-253-1100 (10-10)

#### AFFIDAVIT OF PUBLICATION

(Affidavit of Publisher)

STATE OF MICHIGAN, ss. COUNTY OF OAKLAND

The undersigned, an employee of the publisher of Oakland County Legal News, having knowledge of the facts, being duly sworn deposes and says that a notice, a true copy of which is annexed hereto, was published in Oakland County Legal News a newspaper circulated in Oakland County on October 10, 2013 A.D.

Cindy C. Lawler

Subscribed and sworn before me on this 10th day of October 2013 A.D. 6

Christina Jacobs

Notary Public Macomb County/Michigan. My commission expires: February 24, 2020 Acting in Oakland County, Michigan.

FILED 20 FILED CONTROL OF FRESHER

Attorney:

William C Hanson (Oaklandi) - William C Hanson (Oaklandi)

AttorneyFile#:

2013-352666-DE

Notice#:

1161951

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Approved, SCAO				JIS CODE: SPC
STATE OF MICHIGAN PROBATE COURT COUNTY OF Oakland	STATEMENT AND	PROOF OF CLAIM	FILE NO. 2013-352-	666-DE
Estate of Randy M. Bergeron				
I, Trustees of the Carpenters Pens Creditor's name 48098		$\frac{\text{Vicinity}}{\text{Address}}$ of $\frac{700 \text{ Towe}}{\text{Address}}$ mit the following claim aga		00 Troy, Michigan e for the sum set forth.*
	DESCRIPTION OF CLA	IM		AMOUNT
ERISA Withdrawal Liability				4,749,024.00
		****		
Th	ere is now due on the clain	n, above all legal setoffs, f	he sum of:	4,749,024.00
Notice to interested persons: This lecedent. A hearing will be held to declare under the penalties of perjudice to the best of my information, known as the same of the same o	determine whether to allow ury that this statement and p nowledge, and belief.	the claim. You may obje	ct to the claim	before or at the hearing.
enjamin A. Schepis	P74258	Milla /	///cm/	h #
ame (type or print) 000 Town Center, Ste. 2370	Bar no.	Claimant signature	2/2 1200	
Idress		3800 Woodward Ave.,	pre. 1200	
outhfield, Michigan 48075	(248) 354-0380	Detroit, Michigan 4820	1	(313) 832-1595
ly, state, zip	Telephone no.	City, state, zip		Telephone no.
<ol> <li>Describe nature of claim or attact</li> <li>Claims must be presented either</li> <li>This claim may also be filed with</li> </ol>	er personally or by mail to t	he fiduciary on or before t	he last day for	if submitted by assignee.  presentment of claims.
	•	OND PAGE)		
SE NOTE: If this form is being filed in the c	ircuit court family division, please	enter the court name and coun	ty in the upper le	ft-hand corner of the form.

Do not write below this line - For court use only

PROOF OF SERVICE
I served upon William Hanson
fiduciary, a copy of this statement and proof of claim on October 31, 2013 by First Class Mail and Certified Mail/Return Receipt Requested at 1750 S. Telegraph Road, Ste. 301, Bloomfield Hills, MI 48302
I declare under the penalties of perjury that this proof of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.  10/31/13  Date  Signature
ACKNOWLEDGMENT OF SERVICE
Service of the attached statement and proof of claim is acknowledged.
Date Signature